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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
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		<p>First Named Inventor <u>Karl Allen Dierenbach</u></p>	
		<p>Art Unit <u>2841</u></p>	<p>Examiner <u>Phan, Thanh</u></p>
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input checked="" type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</p> <p><input type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Appl. No. : 10/646,214  
Applicant : Karl Allen Dierenbach  
Filed : August 25, 2003  
TC/A.U. : 2841  
Examiner : Thanh S. Phan

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

### **PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Pre-Appeal Review Panel:

[0500] Applicant respectfully requests a Pre-Appeal Review as per web site posting located at <http://www.uspto.gov/web/offices/com/sol/og/2005/week28/patbref.htm>. As per the outlined procedure, applicant submits a notice of appeal in compliance with 37 CFR 41.31 mailed along with this request. Although applicant intends to appeal every claim rejected by the examiner, applicant understands that this pre-appeal review process is for rejections of record that are clearly not proper and/or without basis. Accordingly, applicant has limited this brief to discussing selected instances of clearly erroneous rejection reasoning proffered by the examiner. Applicant specifically reserves applicant's right to make additional and separate arguments when applicant files an appeal brief under 37 CFR 41.31. However, applicant requests that, in light of the clearly erroneous rejection reasoning discussed below, that this review panel place the application in allowance or reopen the prosecution.

#### **[0501] I. Discussion of §102(b) Rejection of Applicant's Claims 1 and 9**

[0502] The Final Detailed Action dated 08/19/2005, in regards to applicant's Claims 1 and 9, states on page 2 that "Heintz discloses an apparatus for the display of time [figures 1-3], comprising: a clockwork [column 1, lines 36-37]; said clockwork having two coaxial output shafts [24,28]...." The statement is wholly inaccurate. Even a cursory examination of Heintz figure 3 clearly shows that shafts 24 and 28 are not coaxial but parallel and separated by a considerable distance and labeled separately. Applicant is at a loss as to how the two shafts could be called coaxial. The two shafts do not share a common axis. Since Heintz does not disclose a clockwork with two coaxial output shafts, it is inappropriate to use Heintz for a §102(b) rejection because every aspect of applicant's invention is not disclosed by Heintz.

[0503] In the same sentence, the Final Detailed Action dated states "said clockwork having two coaxial output shafts [24,28] driven at different angular rates...." Again, the statement is wholly inaccurate. An examination of Heintz figure 3 shows that the shafts 24 and 28 are driven at the same angular rate. The clockwork [19] turns an output shaft [21] onto which is attached a gear [22, column 2, lines 9-11] which meshes with two gears [23, 27] each having 60 teeth [column 2, lines 14 and 30]. Since they have the same number of teeth and are both driven by the same gear [22], gears 23 and 27 each turn at the same angular rate. Gears 23 and 27 are each attached to the shafts [24 and 28] cited by the examiner [column 2, lines 12-14 and 29-31], therefore since the gears [23 and 27] are rotating at the same rate, the shafts they are rigidly attached to [24 and 28] must also be rotating at the same angular rate. Therefore, the examiner's statement that the two drive shafts are "driven at different angular rates" is incorrect and represents a fundamental misinterpretation of the reference. Since Heintz does not disclose a clockwork with two coaxial output shafts driven at different angular rates, it is inappropriate to use Heintz for a §102(b) rejection because every aspect of applicant's invention is not disclosed by Heintz.

[0504] Still in the same sentence, the Final Detailed Action continues "two drive wheels [26, 36], one drive wheel attaches[sic] to each of the said drive shafts...." The statement is incorrect and clearly erroneous. Examination of Heintz figure 3 clearly shows that shafts 24 and 28 are not attached to gears 26 and 36. Heintz column 2, lines 15-18, states "Stud shaft 24 rigidly carries a smaller ring gear 25 that has ten teeth which mesh with a larger ring gear 26 having forty teeth." Clearly, gear 26 is not attached to shaft 24. Similarly, Heintz [column 2, lines 29-40] describes how shaft 28 rotates gear 27 which meshes with gear 30 which is rigidly attached to gear 32 which meshes with gear 33 which is rigidly attached to gear 35 which meshes with gear 36. Clearly, gear 36 is not attached to shaft 28, there are several gears in between gear 36 and shaft 28 and it is wholly unreasonable to call them connected. Since Heintz does not disclose "two drive wheels [26, 36], one drive wheel attaches[sic] to each of the said drive shafts," it is inappropriate to use Heintz for a §102(b) rejection because every aspect of applicant's invention is not disclosed by Heintz.

[0505] II. Discussion of §102(b) Rejection of Applicant's Claims 3 and 11

[0506] The Final Detailed Action in regards to applicant's Claims 3 and 11 states on page 3 that "Heintz discloses wherein the rigid members are substantially clear annular rings...." This is incorrect. Nowhere in Heintz is there a description, figure or mention of rings. The only parts in Heintz disclosed to be clear are two disks [15,17]. These disks [15, 17], are consistently described as disks. "[P]eripherally toothed disc 15," [column 1, line 50], and "in front of disc 15 is another transparent disc 17," [column1, lines 54-55], are two examples of how the disks [15, 17] are described in Heintz. To call the disks [15, 17] of Heintz annular rings distorts the definitions of "disk" and "ring" in a wholly unreasonable manner. "Ring" and "Disk" are different words with specific and different meanings that are not interchangeable and to use them interchangeably causes confusion and is clearly erroneous. Since Heintz does not disclose clear annular rings, it is inappropriate to use Heintz for a §102(b) rejection because every aspect of applicant's invention is not disclosed by Heintz.

[0507] In the same sentence, the Final Detailed Action continues "wherein said first rigid member having an inner radius [not explicitly labeled] at least ten percent as large as the outer radius of said first rigid member...." Applicant asserts that there is no inner radius because the rigid members in Heintz are disks and not rings and therefore it would be impossible to explicitly label the non-existent inner radius. Furthermore, there is clearly no inner radius referred to in Heintz. Heintz does not refer to an inner radius in any of the three figures nor is an inner radius referred to in the text of Heintz. Heintz Figure 1 does show circles in the center of the clock face, but these circles are not discussed in the specification and there is no evidence or text to support the notion that the circles represent through-holes in the disks. To the contrary, the most reasonable interpretation of the circles is that they are printed on the disks [15, 17] for decorative purposes in a manner similar to how the hour [16] and minute [18] hands are printed on the disks [15, 17]. This conclusion is based on the facts that there are no witness lines that show through holes in the disks [15, 17] in Figure 2, there is no mention of through holes in the disks [15, 17] in the text of Heintz, and the disks [15, 17] are consistently referred to as disks in the text of Heintz. Since Heintz does not disclose substantially clear annular rings, it is inappropriate to use it for a §102(b) rejection because every aspect of applicant's invention is not disclosed by Heintz.

[0508] III. Discussion of §102(b) Rejection of Applicant's Claim 20

[0509] The Final Detailed Action dated 08/19/2005 in regards to applicant's Claim 20 on page 3 states "the claimed invention is discloses [sic] by Heintz in the above rejections." Applicant's Claim 20 claims, in part, "...a first annular member having an inner radius at least ten percent as large as the outer radius of said first rigid annular member...." However, as discussed in detail above, Heintz does not disclose annular members. The time indicating members of Heintz are disks [15, 17], which are different than annular rings. Over and over, Heintz refers to the members as disks and there is nothing in Heintz to support the examiner's assertion that the Heintz disks [15, 17] are annular members as described in applicant's Claim 20. Since Heintz does not disclose annular members, it is inappropriate to use Heintz for a §102(b) rejection because every aspect of applicant's invention is not disclosed by Heintz.

[0510] Additionally, applicant asserts that the brevity and lack of detail in the examiner's one-line rejection of Claim 20 is insufficient in that it does not clearly state why Claim 20 was rejected thereby hindering applicant's ability to argue against or traverse the rejection.

[0511] IV. Discussion of §103(a) Rejection of Applicant's Claim 7

[0512] Applicant's Claim 7 claims a configuration where the first rigid member has a flange which hides the drive wheels as described in the claim and shown in applicant's figures 7 through 12. The examiner makes no mention of these features anywhere in the rejection and only discusses the positioning of the first rigid member. Since the examiner has not even acknowledged this claimed feature, let alone introduce any prior art regarding said feature, all of the features of applicant's invention were not disclosed by Heintz in view of Hartwig and a § 103(a) rejection was clearly erroneous. On this basis alone, Claim 7 should not have been rejected.

[0513] V. The Prior Art Cited by Examiner Was Previously Considered and Determined Not to be Applicable

[0514] In the first office action, dated 04/07/2004, the examiner at the time, Michael L. Lindinger, considered Heintz and did not use Heintz as a reference in the office action. This is indicated by Mr. Lindinger initialing next to Heintz on the IDS. The current examiner has not indicated how applicant's minor modifications to the claims have changed the claims to transform a once-considered and unused reference into a primary reference used in a §102(b) rejection. Applicant asserts that the latest amendments to the claims do not warrant discarding a

previous examiner's determination and that the previous examiner's determination should be given full faith and credit. As stated in MPEP § 706.04, page 700-71, "Full faith and credit should be given to the search and action of a previous examiner unless there is a clear error in the previous action...." The examiner makes no mention of clear error by the previous examiner.

[0515] Applicant requests that the use of Heintz as a reference be withdrawn and the application allowed. Applicant also asserts that aside from the contention that it was improper and clearly erroneous to resurrect Heintz as a reference because it was already considered, the use of Heintz as a reference fails on its merits as discussed above.

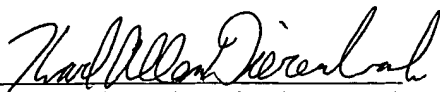
[0516] VI. Conclusion

[0517] Applicant also expresses concern about the path this application has taken. Applicant has responded in full, sincerely, with respect, and in detail, to three office actions and each time, instead of discussing applicant's response and working toward acceptable claim language, applicant's arguments have been ignored and totally new grounds for rejection have been issued in the following office actions. This is not reasonable and has not helped to focus in on the pertinent issues.

[0518] This format is too brief to fully explore all of the errors committed by the examiner in the prosecution of this patent. Throughout the prosecution of this patent, the examiner has grossly misinterpreted prior art, confused basic mechanical elements such as rings and discs, and incorrectly used fundamental terms like "rests on" and "suspended." Many of the errors were discussed in previous responses to office actions. Applicant asserts that the above examples of clearly erroneous rejections are only the most blatant and are all clearly erroneous.

[0519] Accordingly, applicant respectfully requests that a timely Notice of Allowance be issued in this case, or at the very least, the proceeding be reopened and applicant and a new examiner cooperate to fully define applicant's invention.

Respectfully submitted,

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